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16 UNITED STATES OF AMERICA

17 UNITED STATES DISTRICT COURT

18 FOR THE CENTRAL DISTRICT OF CALIFORNIA

19 UNITED STATES OF AMERICA,

20 CR No. 17-00423-AB

21 Plaintiff,

22 GOVERNMENT'S SENTENCING POSITION
23 FOR DEFENDANT YANNICK MAI

24 v.

25 YANNICK MAI,

26 Defendant.

27 Sentencing Date: April 5, 2019
28 Sentencing Time: 1:30 p.m.
Location: Courtroom of the
Hon. André Birotte
Jr.

29 Plaintiff United States of America, by and through its counsel
30 of record, the United States Attorney for the Central District of
31 California and Assistant United States Attorney Sylvia R. Ewald,
32 hereby files its sentencing position for defendant YANNICK MAI.

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This sentencing position is based upon the attached memorandum of points and authorities, the Presentence Investigation Report, the files and records in this case, and such further evidence and argument as the Court may permit.

Dated: March 14, 2019

Respectfully submitted,

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/s/
SYLVIA R. EWALD
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant YANNICK MAI ("defendant") attempted to smuggle methamphetamine through Los Angeles International Airport ("LAX") to Tahiti. As a result of this conduct, defendant pleaded guilty pursuant to a plea agreement to possession with intent to distribute methamphetamine, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(A)(viii). (Plea Agreement (Dkt. 69); Minutes of Change of Plea Hearing (Dkt. 71).) The United States Probation and Pretrial Services Office ("Probation Office") has filed its Presentence Investigation Report ("PSR"), in which it provides that defendant is subject to a ten-year mandatory minimum sentence and sets out the following Guidelines calculations: a total offense level of 35, a criminal history category of I, and, accordingly, a Guidelines imprisonment range of 168 to 210 months. (PSR ¶¶ 77-78.) The Probation Office also filed a letter in which it recommends a sentence of imprisonment of 120 months. (Dkt. 72.)

The government believes that defendant is safety-valve eligible and objects to a number of the Probation Office's Guidelines calculations. If the government's objections are sustained, the total offense level will be 29, resulting in a Guidelines range of 87 to 108 months. Taking into account the factors identified in 18 U.S.C. § 3553(a), the government recommends that defendant be sentenced to a term of 87 months' imprisonment, five years' supervised release, and a \$100 mandatory special assessment.

II. STATEMENT OF FACTS

On June 10, 2017, defendant was caught attempting to smuggle methamphetamine through security at LAX, intending to transport the

1 methamphetamine to Tahiti, where it would be distributed to others.
2 (PSR ¶ 11.) Defendant was traveling with two other people, his
3 daughter TEHEA MAI and an acquaintance named GHISLAINE TAOAHERE
4 COUPEL-GERMAIN. Both TEHEA MAI and COUPEL-GERMAIN also attempted to
5 smuggle methamphetamine through security and onto the plane to
6 Tahiti. (PSR ¶¶ 12-13.) Laboratory analysis of the methamphetamine
7 defendant was carrying determined that the methamphetamine consisted
8 of 1382 grams of actual methamphetamine. (PSR ¶ 16; see also Plea
9 Agreement (Dkt. 69).)

10 **III. THE PRESENTENCE REPORT AND GUIDELINES CALCULATIONS**

11 In calculating the offense level, the Probation Office begins
12 with a base offense level of 36 under USSG § 2D1.1(c)(2), on the
13 basis of the amount and purity of methamphetamine defendant and his
14 co-defendants possessed. (PSR ¶¶ 24-31.) The Probation Office then
15 applies a two-level increase under USSG § 3B1.1(c) because he acted
16 as an organizer. (PSR ¶ 36.) Last, the Probation Office subtracts
17 three levels for acceptance of responsibility under USSG § 3E1.1(a)
18 and (b). (PSR ¶¶ 40-41.) The Probation Office determines
19 defendant's criminal history category to be I, based upon a criminal
20 history score of 0. (PSR ¶ 47.) Taking the total offense level of
21 35 and criminal history category of I, the Probation Office concludes
22 that the Guidelines imprisonment range is 168 to 210 months. (PSR
23 ¶ 87.)

24 The government objects to a number of the Probation Office's
25 calculations. First, the government objects to the base offense
26 level. The Probation Office has determined defendant's base offense
27 level to be 36, accounting for the methamphetamine not only that
28 defendant himself possessed but also the methamphetamine that MAI and

1 COUPEL-GERMAIN possessed. (PSR ¶¶ 24-31.) The parties agreed in
2 defendant's plea agreement that the applicable base offense level is
3 34. (Dkt. 69 at 7.) This is based upon the amount of
4 methamphetamine that only defendant, and not his co-defendants,
5 possessed. (Dkt. 69 at 6.) The government takes the position that
6 defendant's base offense level should account for only the drugs he
7 possessed, and not for the drugs his co-defendants possessed.

8 Second, the government also objects to the application of a two-
9 level increase for aggravating role. The government initially took
10 the position that defendant maintained a leadership position during
11 the offense (PSR ¶ 33), but based upon information learned during a
12 safety-valve proffer, now takes the position that he did not and that
13 no aggravating role adjustment is appropriate. The government
14 understands that defendant was acting as a courier, and accordingly
15 believes that no upward adjustment is appropriate.

16 Third, while the government initially believed that defendant
17 was not safety-valve eligible (PSR ¶ 33), it now takes the position
18 that he is safety-valve eligible. The defendant has truthfully
19 proffered. Additionally, as discussed above, based upon information
20 learned during that proffer, the government believes that defendant
21 was not acting in a leadership capacity. If this Court determines
22 that defendant is safety-valve eligible, the ten-year mandatory
23 minimum sentence is inapplicable and a two-level decrease under
24 U.S.S.G. § 2D1.1(b)(18) is applicable.

25 The government accordingly calculates defendant's total base
26 offense level to be 29, criminal history category to be I, resulting
27 in a Guidelines range of 87 to 108 months.

1 **IV. THE GOVERNMENT'S SENTENCING POSITION**

2 **A. A Custodial Sentence of 87 Months Is Justified and**
3 **Appropriate**

4 The government's recommendation of 87 months' imprisonment is
5 appropriate and justified in light of the factors set forth under
6 Title 18, United States Code, section 3553(a), namely, the nature and
7 circumstances of the offense, the history and characteristics of
8 defendant, and the need for the sentence to reflect the seriousness
9 of the offense and to afford adequate deterrence to criminal conduct.
10 As discussed below, an 87-month term of imprisonment, which falls at
11 the low end of the applicable Guidelines range, appropriately
12 accounts for the aggravating and mitigating circumstances in this
13 case.

14 First, the nature and circumstances of defendant's offense are
15 serious. See 18 U.S.C. § 3553(a)(1). Defendant possessed with the
16 intent to transport to and distribute in another country a
17 significant amount of methamphetamine. (PSR ¶¶ 11, 16-17.)

18 Second, the recommended sentence appropriately takes into
19 consideration defendant's history and characteristics. See 18 U.S.C.
20 § 3553(a)(1). Defendant has no criminal history in the United
21 States. (PSR ¶ 48.)

22 Third and finally, the government's recommended sentence
23 addresses the seriousness of the offense, promotes respect for the
24 law, provides just punishment, affords adequate deterrence, and
25 protects the public from further crimes of defendant. See 18 U.S.C.
26 § 3553(a)(2). Defendant accepted responsibility by pleading guilty.
27 His lack of criminal history in the United States is a mitigating
28 circumstance. Given the seriousness of the offense, a significant

1 term of custody is necessary to protect the public from further
2 crimes of defendant and deter defendant from engaging in future
3 criminal conduct. In sum, an 87-month sentence is appropriate based
4 on the factors set forth in 18 U.S.C. § 3553(a), including the
5 mitigating circumstances of defendant's history and his role as a
6 courier.

7 **B. The Recommended Supervised Release Term, Fine, and Special
Assessment Are Appropriate**

8 The imposition of a five-year term of supervised release is
9 warranted in light of the seriousness of the instant offense and
10 defendant's history and characteristics. Supervision will help
11 prevent defendant from committing further crimes and from attempting
12 to enter the United States. The Probation Office has determined that
13 defendant does not have the ability to pay a fine. (PSR ¶83.) The
14 government agrees with the Probation Office's assessment and
15 recommends that defendant not be ordered to pay a fine. The
16 government likewise recommends that no restitution be ordered. A
17 special assessment of \$100 for defendant's conviction is mandatory.
18 (PSR ¶ 94.)

19 **V. CONCLUSION**

20 For the foregoing reasons, the government respectfully requests
21 that this Court impose a low-end Guidelines sentence of 87 months'
22 imprisonment, a five-year term of supervised release, and a \$100
23 special assessment.